

California Department of Health Services (CDHS)
Medical Care Services
Summary of Written Public Comments for
Home and Community-Based Services (HCBS)
Nursing Facility and Acute Hospital (NF/AH) Draft Waiver Application

CATEGORY OF ISSUE	CDHS RESPONSE
<p>Issue # 1 – Appendix B-1 [b]-Target Groups Additional Criteria.</p> <p>Additional criteria to the target group regarding the support system should include the following: <i>“persons experienced in or trained through an Independent Living Center or private or public organization in self-directing the care and supports necessary to live independently in the community.”</i> Since many adults with disabilities live independently and alone, the above support system or additional target group would help prevent categorically having such adults denied HCBS services.</p>	<p>As stated in Appendix B-1 (b), the waiver participant must identify a support network system that will provide care in the absence of the participant’s waiver providers.</p> <p>Individuals in the support network can include <i>“...any other individual that is part of the participant's circle of support.”</i></p>

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<p>Issue # 2 – Appendix B -7[a]-Freedom of Choice. This section requires a <i>"<u>waiver participant</u> be given a freedom of choice form."</i> To ensure that EVERY Californian has freedom of choice, every nursing facility (NF), skilled nursing facility (SNF), assisted living facility (ALF) and rehabilitation facility resident should be given the <i>"freedom of choice form."</i></p>	<p>The Freedom of Choice document is presented to the waiver applicant once In-Home Operations (IHO) staff has assessed the applicant and provided the applicant and/or his/her legal representative with information on the services available under the waiver and the participant's roles and responsibilities.</p> <p>Offering the Freedom of Choice document to every Californian residing in a nursing facility, assisted living facility, or rehabilitation facility would imply that the waiver could serve every applicant, that every applicant would qualify for the waiver, and the services available through the waiver would meet the applicant's needs to ensure his/her health and safety to return to his/her home and community.</p>
<p>Issue # 3 – Eligibility for DP rate. Unclear what the eligibility criteria would be for the Distinct Part (DP) rate. Although eligibility is shown on page B-1:2-3 in 3 parts, it does not specify whether an individual needs to enter a DP NF or show that they require placement in a DP NF in order to qualify for the rate.</p>	<p>CDHS will be clarifying with the Centers for Medicare & Medicaid Services (CMS) the criteria for authorizing the DP facility rate, as this is a reimbursement rate and not a level of care determination.</p>

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<p>Issue # 4 – Non-profit agency as case manager provider.</p> <p>Page C-3:1-2 adds the provider category of <i>"non-profit agency"</i> and states a business license is required. What is meant by <i>"other standards"</i> and what are the <i>"NF/AH Standards of Participation (licensed professional only)"</i>? Does this mean that Waiver Standards of Participation apply only for <i>"licensed professionals"</i> or that only <i>"licensed professionals"</i> are providers? This question also applies to the habilitation provider category of non-profit agencies, too.</p>	<p>CMS requires that a waiver participant's needs are described in a Plan of Treatment (POT). All individuals who will be enrolled in the HCBS NF/AH Waiver have chronic and/or catastrophic medical care needs. It is the responsibility of the Case Manager to assist the participant in developing his/her POT. Due to the complexity of the HCBS NF/AH Waiver participant's needs, a licensed professional or non-profit agency employing licensed and unlicensed professionals as described in the Standards of Participation is needed to ensure all the participant's medical care needs are identified, and that the services, providers and frequency of services are described in the POT to ensure the participant's health and safety. In support of this requirement, IHO Nurse Evaluators, who are Registered Nurses, are available to assist the participant in the development of his/her POT in the absence of a waiver case manager.</p>
<p>Issue # 5 – Cost Neutrality.</p> <p>Why are years 2003-2004 numbers used for both factor G and D and what is the proposed cost-cap for NF-B and DP?</p>	<p>At the time of the development of the HCBS NF/AH Waiver Application, the 2003-2004 data was the most current for the NF A/B level of care. Currently, CDHS is in the process of obtaining data for 2005.</p>

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<p>Issue # 6 – Number of slots for community vs. Laguna Honda Hospital (LHH) individuals on waitlist. How many slots of the new 500 slots will be for LHH individuals and how many will be for the community?</p>	<p>Senate Bill (SB) 643 requires CDHS to add 500 slots to the NF A/B Waiver. Of those 500, a minimum of 250 slots are to be used to transition individuals from a nursing facility to the community. The remaining slots will be available for individuals who are on the NF A/B Waiver waiting list and residing in the community.</p>
<p>Issue # 7 – Current nursing home reimbursement figures. Would like for the Medicaid nursing home reimbursement figures to be current, when computing the dollar amount of waiver services to the recipients.</p>	<p>CDHS is reviewing the current cost Medi-Cal incurs for beneficiaries receiving care in a nursing facility.</p>
<p>Issue # 8 – Non-profit providers. Independent Living Centers (ILCs) provide important services and are effective in getting and keeping people of all ages out of institutional settings. The qualifications required in the draft, stressing educational and nursing or social work experience are not applicable to the day-to-day operation of ILCs. Some states, such as Kansas and Colorado, have established Medicaid provider categories appropriate to ILCs.</p>	<p>The draft Standards of Participation were developed to include qualified Non-Profit Organizations as waiver providers. These organizations can render HCBS NF/AH Waiver services utilizing employees who are either:</p> <ul style="list-style-type: none"> • licensed professionals; • unlicensed professionals; and/or • professionally supervised unlicensed providers skilled and experienced in providing services to persons with disabilities who reside in his/her home and community.

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<p>Issue # 9 – Concern over "<i>Grandfathered</i>" individuals losing their individual cost cap.</p> <p>Concern over the individuals who were "<i>Grandfathered</i>" into the NF A/B Waiver from the NF and Model NF waiver being required to change their waiver services to meet the individual cost neutrality of the HCBS NF/AH Waiver. This will result in a loss of services for many of the "<i>Grandfathered</i>" individuals and can result in their institutionalization.</p>	<p>Participants enrolled in the NF A/B Waiver will be transitioned to the HCBS NF/AH Waiver with no changes to the type or frequency in the services they are receiving at the time the HCBS NF/AH Waiver is approved by CMS.</p>
<p>Issue # 10 – Loss of Waiver Personal Care Services (WPCS) when In Home Support Services (IHSS) rates are increased.</p> <p>Currently, an increase in the county IHSS reimbursement rate results in the reduction of authorized WPCS hours. WPCS are reimbursed at the county IHSS rate. The rate increase usually results in a decrease in WPCS.</p>	<p>HCBS NF/AH Waiver participants must be cost neutral to their individual waiver cap. When IHSS reimbursement rates are increased, IHO works with the participant in determining how to bring their program back to cost neutrality. The participant has the option of reducing state plan or waiver services. If the beneficiary does not <u>elect</u> to reduce services, IHO will reduce his/her <u>waiver</u> services with appropriate notice and due process.</p>
<p>Issue # 11 – Suggested recommended language:</p> <p><i>"The NF A/B Waiver application must define habilitation as broadly as possible and must allow services to be provided both in and out of the individual's home setting."</i></p>	<p>The NF A/B Waiver <u>broadly</u> defines the purpose of habilitation services and <u>specifically</u> defines services and provider types available, and allows the services to be provided in the home or out of the home in non-facility settings.</p>

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Issue # 12 – Suggested recommended language: <i>“Habilitation services must be flexible in order to enable individuals to receive services in the amount, duration, and scope appropriate to their individual needs.”</i>	The types of habilitation services vary, and the amount and duration of services are individually developed to best serve the participant.
Issue # 13 – Suggested recommended language: <i>“There must be an array of Habilitation Service providers for recipients to choose from.”</i>	The HCBS NF/AH Waiver includes several provider types that can provide habilitation services, including physical therapists, occupational therapists, speech therapists, and non-profit organizations. Qualified providers must meet applicable Standards of Participation requirements.
Issue # 14 – Suggestions for improvements to Habilitation Services. The HCBS NF/AH Waiver must allow for case management and habilitation to be provided by the same provider.	Habilitation providers assist in acquiring, retaining and improving the self-help, socialization and adaptive skills of the participant. Case managers develop and update the POT, coordinate/monitor the package of long term care services, and oversee implementation of services, etc. Case managers can help with coordination of habilitation services.
Issue # 15 – Suggestions for improvements to Habilitation Services. Would like Residential, Day and Prevocational Habilitation.	The HCBS NF/AH Waiver provides for self-help, socialization and adaptive skills training. However, the waiver does not provide pre-vocational services.

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<p>Issue # 16 – Recommends describing Case Management in Appendix. (B-1) as: <i>"Case Management may be provided by a qualified provider of the individual's choice, including RN, MFCC, Clinical Psychologist, LCSW or individuals working under the supervision of such health care professionals, and/or the providers qualified to provide Habilitation services."</i></p>	<p>The HCBS NF/AH Waiver includes participants who are medically fragile, disabled and/or aged, and who may be technologically dependent. Since their care needs are typically medical in nature, a licensed professional or non-profit agency that employs licensed or unlicensed professionals who meet the waiver's Standards of Participation is required to develop and oversee the POT that meets these needs.</p>
<p>Issue # 17 – Qualification of Case Management and Habilitation providers: Qualified providers of case management and habilitation should include the same types of providers who provide such services under the Developmentally Disabled (DD) Waiver.</p>	<p>There are numerous qualified provider types in the waiver that can provide HCBS NF/AH Waiver services. The HCBS NF/AH Waiver targets a different population than the DD Waiver.</p>
<p>Issue # 18 – Non-Profit Agency draft Standards of Participation should be changed: Require a Statement of Information only, not business license.</p>	<p>The HCBS NF/AH Waiver currently requires both a Statement of Information and a business license. IHO will study the recommendation to revise the Standards of Participation for non-profit organizations and the requirement that non-profits have a business license as well as the Statement of Information by Domestic Non-Profit Corporation.</p>

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<p>Issue # 19 - Need clarification of qualifications regarding the terms & conditions set forth in <u>approved</u> HCBS NF/AH Waiver.</p>	<p>At this time, the HCBS NF/AH Waiver application is in draft form. After submission of the final application, CMS may ask that CDHS revise portions of the application for clarity, or to comply with statutes and regulations governing HCBS waivers. The terms and conditions mentioned in the draft Standards of Participation refers to the final approved HCBS NF/AH application and any terms and conditions outlined by CMS in their final approval letter.</p>
<p>Issue # 20 – Would like new provider types to be approved in a timely manner so services can be accessed immediately.</p>	<p>IHO will be submitting the appropriate documents for the new waiver provider types and services once the HCBS NF/AH Waiver is approved. IHO will also help new providers "walk through" the process for a speedy approval.</p>

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<p>Issue # 21 – Selection of Entrants to the Waiver. Would like to request that the HCBS NF/AH Waiver reserve slots for individuals who are at imminent risk for institutionalization within 30 days, if not for the waiver, and authorize and deliver the waiver services within such time period.</p>	<p>IHO can look into this request. It will require the development and testing of criteria for establishing the needs of one individual as greater than the needs of other individuals who have been on the waiting list. Currently, IHO processes waiver requests timely on a first come, first served basis. The most time consuming aspects of the process are scheduling a face to face meeting with the individual, family and/or legal representative to assess the individual for level of care and to explain the HCBS waiver, services, providers and requirements.</p>
<p>Issue # 22 – Eligibility for Distinct Part Rate: Requesting clarification on the use of W&I Code 14091.21(b)(1)(F) that which requires the individual has been residing continuously in a DP/NF for at least 120 days and the description for meeting CCR 51124 and 51335 for 180 consecutive days for determining if an individual is eligible for DP facility rate. Requesting IHO change eligibility criteria to read <i>“individuals who are determined to be likely to require distinct part nursing facility placement for at least 120 days.”</i></p>	<p>Per W&I Code 14091.21, only individuals who are in an acute hospital and meet the criteria described within are eligible for DP/NF placement. The waiver can be amended to include those individuals who are in an acute hospital and meet the DP/NF eligibility criteria as described in W&I Code 14091.21 for DP/NF rate to prevent unnecessary institutionalization.</p> <p>As noted in the answer to Issue #3, CDHS is clarifying with CMS the criteria for authorizing the DP facility rate.</p>